

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 16955
[Redacted],)	
)	DECISION
Petitioners.)	
)	

On August 14, 2002, the staff of the Tax Discovery Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayers), proposing income tax, penalty, and interest for the taxable years 1998 through 2000 in the total amount of \$43,949.

The taxpayers filed an appeal and petition for redetermination. The Tax Commission acknowledged the taxpayers' appeal and gave them two options for having the Notice of Deficiency Determination redetermined. The taxpayers did not request a hearing but did submit additional information in support of their position. The Tax Commission, having reviewed the file, hereby issues its decision.

The taxpayers sent the Tax Commission two documents, one of which contained a 2000 Idaho income tax return showing they had no reportable income. They provided this information to the Tax Commission "to avoid ambiguity or confusion regarding their filing requirement and status as well as to avoid any possible sanctions for failure to file." The taxpayers also requested a determination from the Tax Commission.

The information was forwarded to the Tax Discovery Bureau (Bureau), who then sent the taxpayers a letter inquiring into their Idaho filing requirement. The taxpayers did not respond. The Bureau obtained additional information from [Redacted] other third parties. From that information, the Bureau determined the taxpayers were required to file Idaho income tax returns for the taxable years 1998 through 2000. The Bureau also

determined the 2000 return submitted by the taxpayer was not an accurate representation of the taxpayers' taxable income.

The Bureau prepared returns for the taxpayers and sent them a Notice of Deficiency Determination. The taxpayers protested the Bureau's determination stating that they were not residents of Idaho in 1998, that they were Idaho residents beginning in April 1999, and that they had no federal adjusted gross income for the tax years 1999 and 2000. The taxpayers followed up their protest letter with additional information stating why they were not required to file Idaho income tax returns and why they had no federal adjusted gross income.

The Bureau recognized the taxpayers' arguments as those akin to arguments made in various tax protestor movements. Therefore, the Bureau referred the matter for administrative review. The Tax Commission reviewed the case and provided the taxpayers with an opportunity to provide any additional statements or documents for the Tax Commission to consider in redetermining the Notice of Deficiency Determination. The taxpayers did provide some additional statements, which the Tax Commission considered in making its final decision.

The taxpayers argued that they were not required to file Idaho income tax returns because they were not required to file federal income tax returns. The taxpayers cited Idaho Code section 63-3030(a)(1) – "Every resident individual required to file a federal return under Section 6012(a)(1) of the Internal Revenue Code." From here, the taxpayers' argument expanded into detailing why they were not required to file a federal income tax return. The taxpayers' argument included such things as the legislative intent of the 16th Amendment to the U.S. Constitution; that they are not parties made liable for the tax; that

they are not under the jurisdiction of the tax; that they did not have income from sources taxable under the federal code; and that they are not taxpayers as defined in the Internal Revenue Code.

The taxpayers' primary argument was that they had no sources of income as referred to in Internal Revenue Code (IRC) section 61, which defines gross income in general as "all income from whatever source derived." The taxpayers believe the "source derived" is legally limited by definition in IRC section 861 and the regulations thereunder. The taxpayers believe that only the income described in the "operative sections", as listed in the regulations, are sources within the United States and therefore taxable. Since the taxpayers have no income from the identified sources, they have no taxable sources of income.

The Tax Commission views the source of income argument as a misinterpretation of the IRC. Section 861 of the IRC is for guidance in determining whether income is from sources within the United States or without the United States in the determination of the taxable income of non U.S. citizens, nonresident aliens, and foreign corporations. Regulation 1.861-1(a) states in part, "[T]hese sections explicitly allocate certain important sources of income to the United States or to areas outside the United States," The regulation goes on to say, "[T]he rules contained in this section apply in determining taxable income of the taxpayer from specific sources and activities under other sections of the Code, referred to in this section as operative sections." The operative sections referred to are for the determination of whether income is sourced within or outside the United States in order to compute other provisions of the IRC, i.e. foreign tax credit, DISC and FSC income, etc.

When faced with individuals arguing they have no sources of income within the United States, the courts have stated,

Apparently, petitioner believes that the only sources of income for purposes of section 61 are listed in section 861, that income from sources within the United States is taxed only to nonresident aliens and foreign corporations pursuant to sections 871, 881, and 882, and that section 1461 is the only section of the Internal Revenue Code that makes anyone liable for the taxes imposed by sections 1 and 11.

Section 61(a) defines gross income generally as 'all income from whatever source derived,' including, but not limited to, compensation for services and interest. Sec. 61(a)(1), (4). Section 63 defines and explains the computation of "taxable income". Section 1 imposes an income tax on the taxable income of every individual who is a citizen or resident of the United States. Sec. 1.1-1(a)(1), Income Tax Regs.; see *Habersham-Bey v. Commissioner*, 78 T.C. 304, 309 (1982).

Under section 61(a)(1) and (4), petitioner clearly is required to include his wages, tokens, and interest in gross income. It is well established that compensation for services, in whatever form received, is includable in gross income . . . Petitioner is liable for Federal income taxes on the wages, tokens, and interest he received during 1991. Aiello v. Commissioner, T.C. Memo. 1995-40.

Plaintiff argues further that his remuneration is exempt from taxation under 26 U.S.C. § 861(a)(3)(C)(ii), and thus excludable under 26 U.S.C. § 61 and, by reference, excludable under Wisconsin law. Suffice it to say that if plaintiff wished to avail himself of § 861(a)(3)(C)(ii), he would have to show that his work was done for a foreign office, or an office in a United States possession, of a domestic business entity. He has not alleged this, and it is clear from the record that he performed his work in the State of Wisconsin for Wisconsin employers. Peth v. Breitzmann, 611 F. Supp 50.

In his petition, petitioner contends that respondent erred in determining the deficiencies and additions to tax because 'All income received by Petitioner for the tax years in

question is/was untaxable 'earned income' as defined in I.R.C. Section 911(d)(2)(A).' At the hearing on respondent's Motion For Summary Judgment, petitioner also claimed that 'all of my gross income was received without the United States as defined in Subchapter N of 26 CFR 1.861-1', and 'I am not a citizen of the federal U.S. I make a living in the state of Illinois as a right, and I am not subject to the jurisdiction of the federal United States.'

We find no support for petitioner's position in the authorities he cites. Section 911(d)(2)(A) provides a definition of "earned income" for purposes of section 911. Section 911(a) allows an exclusion from gross income for foreign earned income at the election of a qualified individual, defined as an individual whose tax home is in a foreign country. Sec. 911(d)(1). Petitioner had no foreign earned income and is not a qualified individual for purposes of section 911. Similarly, petitioner's position is not bolstered by the regulations under section 861. To the contrary, section 861(a)(1) and (3) provides that interest from the United States and compensation for labor or personal services performed in the United States (with exceptions not applicable here) are items of gross income which shall be treated as income from sources within the United States.

Section 1 imposes an income tax on the income of every individual who is a citizen or resident of the United States. During the years at issue petitioner resided in Illinois and therefore was a resident of the United States and subject to tax under section 1. A Federal income tax return must be filed by all individuals receiving gross income in excess of certain minimum amounts. Sec. 6012; sec. 1.6012-1(a), Income Tax Regs. Petitioner's gross income in each year exceeds the minimum amount. In short, petitioner is a taxpayer subject to the Federal income tax laws. Solomon v. Commissioner, T.C. Memo 1993-509.

As a citizen of the United States during the years at issue, petitioner is subject to United States Federal income tax on his worldwide income. Sec. 1; Cook v. Tait, 265 U.S. 47 (1924); sec 1.1- 1(a)(1) and (c), Income Tax Regs. It is unnecessary to determine whether that income was from sources within or without the United States since petitioner is not a nonresident alien. See sec. 861." Dacey v. Commissioner, T.C. Memo 1992-187.

The underlying fact is that the taxpayers are U.S. citizens and that they resided in the United States in 1998 through 2000. Therefore the taxpayers are subject to tax on their worldwide income. Regardless, as Idaho residents the taxpayers are required to report to Idaho their income from whatever source derived.

Considering this and the other arguments made by the taxpayers, the Tax Commission was not persuaded the taxpayers did not have any taxable income. The taxpayers' principal arguments were against the Internal Revenue Code. The taxpayers only mentioned the Idaho Code in passing. However, it is the Idaho Code that imposes the tax on taxpayers in this matter.

Idaho Code section 63-3002 states the intent of the Idaho legislature to impose a tax on the residents of Idaho. Idaho Code section 63-3024 imposes a tax on every individual that is required to file a return. Idaho Code section 63-3030 requires that every resident individual required to file a federal return under section 6012(a)(1) of the Internal Revenue Code (IRC) file an Idaho return. Idaho Code section 63-3008 defines an individual as a natural person.

The taxpayers are individuals. They resided in the state of Idaho in 1999 and 2000. Therefore, they are identified as persons the Idaho legislature had the intent of imposing a tax upon.

Idaho Code section 63-3030 references IRC section 6012(a)(1) for setting the thresholds for filing an Idaho income tax return. Section 63-3030 states that every individual required to file a federal return is required to file an Idaho return. IRC section 6012(a)(1) states that every individual having gross income in excess of the exemption

amount is required to file a federal return. Therefore, for Idaho purposes every individual having gross income in excess of the exemption amount is required to file an Idaho return.

The Idaho Legislature incorporated federal tax law concepts in state law for convenience to taxpayers and state tax administrators alike. As stated above, Idaho bases its filing requirement on that of the federal tax law. Thus, if a person files a federal return, they also know they should file an Idaho return.

To simplify the matter further, Idaho bases a large part of its income reporting, deductions, and other tax determination on the federal code. For instance, the Idaho Code measures an individual's gross income in the same manner as the federal tax code. Idaho Code section 63-3011. In fact, the Idaho Legislature has stated that its intent in adopting the Idaho income tax act is "insofar as possible to make the provisions of the Idaho act identical to the provisions of the Federal Internal Revenue Code relating to the measurement of taxable income." Idaho Code section 63-3002. The purpose is to avoid unnecessary duplication and ensure that taxpayers are not needlessly burdened with understanding the differences between a state and federal tax system.

The taxpayers have not shown that their income was below the threshold amount for filing Idaho income tax returns. In fact, the taxpayers made a statement that their 2000 income was over \$133,000, well in excess of the threshold amount. Therefore, the Tax Commission upholds the Bureau's determination that the taxpayers were required to file Idaho income tax returns.

However, the taxpayers did provide sufficient information to show that they did not become Idaho residents until April 1999. Based on that information, the Tax Commission found that the taxpayers were not Idaho residents in 1998. In addition, there

was no evidence the taxpayers had income from Idaho sources in 1998. Therefore, the Tax Commission found the taxpayers were not required to file an Idaho return for 1998.

The 1999 return the Bureau prepared for the taxpayers was a full-year resident return. The taxpayers provided information that showed they did not move to Idaho until April 1999. Therefore, the correct return for the taxpayers for 1999 is a part-year Idaho resident return. The Tax Commission hereby adjusts the return the Bureau prepared for the taxpayers to reflect a part-year resident status. The taxpayers' 1999 Idaho tax was computed as provided in Idaho Code section 63-3026A.

The Tax Commission reviewed the Bureau's correction of the taxpayers' 2000 Idaho income tax return and found the Bureau's determination that the taxpayers did have taxable income in 2000 to be correct. However, the amount of the taxpayers' taxable income was reduced to the amount the taxpayers' documented with copies of 1099-MISC statements.

The Bureau added interest and penalty to the taxpayers' Idaho income tax. The Tax Commission reviewed those additions and found them to be appropriate and in accordance with Idaho Code sections 63-3045 and 63-3046.

WHEREFORE, the Notice of Deficiency Determination dated August 14, 2002, is hereby MODIFIED, in accordance with the provisions of this decision and, as so modified, is APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayers pay the following tax, penalty, and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1999	\$6,651	\$1,663	\$1,671	\$ 9,985
2000	9,094	2,274	1,557	<u>12,925</u>
			TOTAL DUE	<u>\$22,910</u>

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of taxpayers' right to appeal this decision is enclosed with this decision.

DATED this ____ day of _____, 2003.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that I have on this ____ day of _____, 2003, served a copy of the within and foregoing DECISION by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted] Receipt No.
[Redacted]
